

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
KEIZO SUMITANI,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCNB No. 538

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 1st day of July, 1974, at Seattle, Washington; and appellant, Keizo Sumitani, appearing pro se and respondent, Puget Sound Air Pollution Control Agency, appearing through Keith D. McGoffin; and Board members present at the hearing being Walt Woodward (presiding officer) and Chris Smith; and the Board having considered the sworn testimony, exhibits, records and files herein and having entered on the 11th day of July, 1974,

1 its proposed Findings of Fact, Conclusions of Law and Order, and the
2 Board having served said proposed Findings, Conclusions and Order upon
3 all parties herein by certified mail, return receipt requested and twenty
4 days having elapsed from said service; and

5 The Board having received no exceptions to said proposed Findings,
6 Conclusions and Order; and the Board being fully advised in the premises;
7 now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
9 Findings of Fact, Conclusions of Law and Order, dated the 11th day
10 of July, 1974, and incorporated by this reference herein and attached
11 hereto as Exhibit A, are adopted and hereby entered as the Board's
12 Final Findings of Fact, Conclusions of Law and Order herein.

13 DONE at Lacey, Washington, this 6th day of August, 1974.

14 POLLUTION CONTROL HEARINGS BOARD

15
16 Walt Woodward
17 WALT WOODWARD, Chairman

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19 Chris Smith
20 CHRIS SMITH, Member

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25 FINAL FINDINGS OF FACT,
26 CONCLUSIONS OF LAW
27 AND ORDER

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Mr. Keith D. McGoffin
Burkey, Marsico, Rovai & McGoffin
818 South Yakima Avenue
Tacoma, Washington 98405

Ms. Keizo Sumitani
327 Lake Washington Blvd.
Seattle, Washington 98122

Puget Sound Air Pollution Control Agency
410 West Harrison Street
Seattle, Washington 98119

the foregoing being the last known post office addresses of the above-named parties. I further certify that proper postage had been affixed to the envelopes deposited in the U.S. mail.

L. Rene C. Barlin
LARENE C. BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

1 IN THE MATTER OF)
2 KEIZO SUMITANI,)
3 Appellant,)
4 vs.)
5 PUGET SOUND AIR POLLUTION)
6 CONTROL AGENCY,)
7 Respondent.)

PCHB No. 538

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

8 This matter, the appeal of a \$50.00 civil penalty for an
9 alleged smoke emission violation of Respondent's Regulation I,
10 came before the Pollution Control Hearings Board, Walt Woodward
11 (presiding officer) and Chris Smith, at a formal hearing in
12 Seattle at 11:30 a.m., July 1, 1974.

13 Appellant appeared pro se; Respondent appeared through
14 Keith D. McGoffin. Sherri Darkow, Olympia court reporter, recorded
15 the proceedings.

16 Having heard the evidence and considered the exhibits, the
17 Board makes the following

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EXHIBIT A

1 FINDINGS OF FACT

2 I.

3 Appellant is the owner of a three-story vacant building located
4 at 501 E. Pine in Seattle, and was the owner of said building at
5 all pertinent times in this matter.

6 II.

7 On January 30, 1974, Walter D. DeHaan, senior inspector for
8 the Puget Sound Air Pollution Control Agency, responded to a
9 radio call informing him of puffs of black smoke emitting from
10 a building, which was later identified as that of Appellant's. At
11 this time, the emissions were insufficient to violate Respondent's
12 standards. Because the building was vacant, the inspector called
13 the realtor representing the owner to alert him about the smoke.
14 Although the realtor said that he would contact the owner, he
15 did not until sometime after the notice of violation here in
16 question. The owner was in the hospital at the time and never
17 received actual notice of any problems.

18 III.

19 On January 31, 1974, at approximately 11:00 a.m., having been
20 alerted to watch for smoke from Appellant's building, David H. Walls,
21 a duly qualified air pollution inspector, later observed black smoke
22 emitting from Appellant's boiler stack. He recorded observations
23 of the emissions at 4 3/4-5 on the Ringelmann Chart for a period
24 of 7 1/2 minutes of 30 minutes observed. Following this he took
25 three photographs of the emissions. Because the building was
26 vacant, a notice of violation was sent to Appellant by certified

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 mail.

2 IV.

3 From the notice of violation, a notice of civil penalty of
4 \$50.00 was issued pursuant to Regulation I. This penalty is the
5 subject matter of this appeal.

6 V.

7 This violation is the Appellant's only violation. Upon
8 discovering that the smoke emissions were a problem, he took
9 immediate action to rectify it by calling the A. Wilcox Company
10 to fix it.

11 VI.

12 Any Conclusion of Law hereinafter recited which should be
13 deemed a Finding of Fact is hereby adopted as such.

14 From these Findings, the Pollution Control Hearings Board
15 makes these

16 CONCLUSIONS OF LAW

17 I.

18 There was a violation caused or allowed by Appellant of
19 Section 9.03 of Regulation I on January 31, 1974.

20 II.

21 Any Finding of Fact which should be deemed a Conclusion of
22 Law is hereby adopted as such.

23 Therefore, the Pollution Control Hearings Board issues this

24 ORDER

25 The appeal of the \$50.00 civil penalty is denied. The \$50.00
26 civil penalty is suspended and no penalty shall be due if for a

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 period of six (6) months from the date that this Order becomes
2 final no further violations occur.

3 DONE at Lacey, Washington, this 11th day of July, 1974.

4 POLLUTION CONTROL HEARINGS BOARD

5 Walt Woodward
6 WALT WOODWARD, Chairman

7 Chris Smith
8 CHRIS SMITH, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER